S.B. Civil Revision Petition No.883/01

State & Ors. Vs. Kurda Ram & Ors.

Date of Order : 10/08/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. S.N. Gupta, Addl.G.A., for petitioner
None present for respondents

Instant revision petition has been filed against the order dated 22nd March, 2001 whereby the application filed by the defendant-petitioner under O.7 R.11 CPC was rejected by the learned trial Judge.

Respondent-plaintiff filed a suit for permanent injunction with regard to Khasra Nos.1341 & 1342 with the prayer that he should not be dispossessed from the land in question without adopting due process of law. It is pointed out that a notice u/s.91 of the Land Revenue Act, 1956 was served upon the respondent-plaintiff Kurda Ram for removing the encroachment from the land in question.

After copy of plaint was served upon the defendant-petitioner, application was filed under O.7 R.11 CPC with an objection that the present dispute which has been raised by the respondent-plaintiff is a revenue mater and arises under the provisions of Rajasthan Land Revenue Act and no such proceedings can be initiated before the Civil Court in view of statutory bar provided u/s. 207 of the Act.

Learned trial Judge after taking note of material recorded a finding that this is a mix question of law and fact which can be examined only after its adjudication and not at the initial stage. Consequently, rejected the application filed by the defendant. Hence, this revision petition.

Counsel for petitioner submits that undisputedly the land for which permanent injunction was sought by the respondent-plaintiff is agriculture land and covered under the provisions of the Act, 1956 and in view of statutory bar u/s.207 of the Act the proceedings before the Civil Court could not have been instituted and the learned trial Judge has committed a manifest error in rejecting their application under order impugned dated 22nd March, 2001.

No one has appeared to oppose the present revision petition despite service.

I have heard learned counsel for petitioner and perused the material on record.

From the material which has been placed on record, it is clearly envisaged that the respondent-plaintiff sought permanent injunction with regard to Khasra Nos.1341 & 1342 which prima facie from bare reading of the plaint is an agriculture land for which a notice was served upon him u/s.91 of the Act, 1956 and there being a statutory bar u/s.207 of the Act. In my opinion, the learned trial Judge has committed a serious error in rejecting the application filed by the petitioner under O.7 R.11 CPC.

Consequently, the order impugned dated 22nd March, 2001 is hereby quashed and set aside and the application filed by the petitioner under O.7 R.11 CPC stands allowed. However, the respondent-plaintiff will be free to proceed by availing remedy available under law.

[Ajay Rastogi],J.

FRB